

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JASON MEVORAH,

Plaintiff,

No. C 05-1175 MHP

v.

WELLS FARGO HOME MORTGAGE, INC.,  
a division of WELLS FARGO BANK,  
NATIONAL ASSOCIATION, and DOES 1  
through 50, inclusive,

Defendants.

**MEMORANDUM & ORDER**  
**Re: Request for Leave to File Motion for**  
**Reconsideration**

Plaintiff Jason Mevorah has brought the present action on behalf of all persons employed by defendant Wells Fargo Home Mortgage, Inc. as home mortgage consultants (“HMCs”), HMC trainees, and any similar positions responsible for originating home mortgage or personal loans to consumers within California. On September 28, 2005, plaintiff filed a motion to correct certain alleged representations that defendant has made to putative class members. Specifically, plaintiff alleged that defendant, through counsel, has contacted members of the potential class and has made false and misleading statements regarding this action and its potential impact. Plaintiff further alleged that defendant has asked members of the potential class to sign declarations regarding the nature of their duties as HMCs and their compensation preferences, and that these declarations as drafted by defendant are inaccurate and omit critical facts. On November 7, 2005, the court heard arguments on plaintiff’s motion. The court subsequently issued an order limiting future communication between the parties and putative class members, permitting plaintiff to depose those

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1 HMCs already interviewed, requiring that a jointly approved notice of the lawsuit be given to  
 2 putative class members, and requiring that the parties create a joint questionnaire for distribution to  
 3 the putative class. Mevorah v. Wells Fargo Home Mortgage, Inc., No. 05-CV-01175-MHP, slip op.  
 4 at 8–9 (N.D. Cal. Nov. 17, 2005).

5 Defendant now seeks leave to file a motion for reconsideration of this court’s ruling on  
 6 plaintiff’s motion to correct. In support of its request for leave, defendant argues that it was not  
 7 afforded an opportunity to respond to an argument advanced by plaintiff in his reply brief for the  
 8 motion to correct—that defendant’s attorneys violated California Rule of Professional Conduct 3-  
 9 600 by contacting defendant’s employees without adequately explaining the potential conflict of  
 10 interest between those employees and defendant. Defendant contends that, given the opportunity to  
 11 brief or otherwise argue the Rule 3-600(D) issue, it could have “demonstrated that, based on every  
 12 treatise that has ever addressed the subject, and in accordance with all pertinent case law in  
 13 California on the subject, Wells Fargo acted in conformity with Rule 3-600(D) when it interviewed  
 14 and/or obtained declarations from the putative class members.” Motion at 1.

15 As an initial matter, although Rule 3-600(D) was not expressly discussed at oral argument,  
 16 the dialogue between the court and the parties concerned precisely the same conflict—between  
 17 employer and employee interests—that Rule 3-600(D) is intended to prevent. More importantly,  
 18 Rule 3-600(D) is not the analytical lynchpin of the court’s ruling, which is based on the totality of  
 19 the coercive circumstances surrounding the employee interviews: the employer-employee  
 20 relationship, the statements allegedly made about the potential impact of the lawsuit on the HMCs’  
 21 method of compensation, and the fact that the HMCs were asked to sign written declarations.  
 22 Indeed, the court assumed for the sake of oral argument that defendant’s attorneys may have  
 23 explained the potential conflict to the employees: “I think, most people would be concerned about  
 24 not giving, about saying, no, I don’t want to answer your questions because I understand I’m a  
 25 member of the class, a class, and I may be in an adverse position to you *or maybe the attorney has*  
 26 *even said that*, but nonetheless they may not realize the full parameters or consequences of the  
 27 talking with the company’s attorney.” Declaration of Richard H. Rahm Authenticating Transcript of  
 28

Hearing in Support of Wells Fargo's Motion for Leave to File Motion for Reconsideration, Exh. A, at 10:4–10 (emphasis added). Briefing submitted by defendant on whether its attorneys complied with the formal requirements of Rule 3-600 will not affect the resolution of plaintiff's motion.

CONCLUSION

For the reasons stated above, defendant's request for leave to file a motion for reconsideration is DENIED.

IT IS SO ORDERED

Date: 12/21/2005



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MARILYN HALL PATEL  
District Judge  
United States District Court  
Northern District of California

UNITED STATES  
For the Northern District of California

DISTRICT

COURT